IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 748 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKORE BHOMAJI PRADHANJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 748 of 2003

MS SN QURESHI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 23/05/2003

ORAL JUDGEMENT

The petitioner-detenu, in this petition, has challenged order of detention dated 29.11.2002 passed by

the District Magistrate, Patan, respondent No.2 herein, under the provisions of Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'the PASA Act').

In the grounds of detention of even date, the detaining authority has relied upon five Prohibition cases registered against the petitioner and has also relied upon the statements of three witnesses for the unregistered cases referred to in the grounds of detention and the detaining authority has recorded a finding that the petitioner is a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act and therefore, with a view to preventing him from acting any manner prejudicial to the maintenance of public order, his detention is required and hence, the order of detention is passed.

Since this petition is required to be allowed on the ground that there is delay in passing the order of detention, it is not necessary for me to consider the other contentions advanced on behalf of the petitioner. Learned Counsel submits that the the last case registered against the petitioner is Prohibition Case No.110 of 2002 on 10.10.2002. There is no dispute to the fact that the petitioner was released on bail on 21.11.2002. The date of proposal is 14.11.2002 by the sponsoring authority. The detaining authority has passed the order of detention on 29.11.2002. Thus, there is a delay of about one month and 19 days from the date of registration of the last offence and 15 days from the date of proposal, i.e. 14.11.2002 and this delay has not at all been explained by the authority, and therefore, the continued detention of the petitioner is illegal.

I find substance in the submission advanced by the learned Counsel for the petitioner. True, the detaining authority has relied upon the unregistered cases filed against the petitioner, as can be seen from the statements of the witnesses whose identity has not been disclosed claiming privilege under Section 9(2) of the PASA Act, but, the said cases have been referred only with a view to cover up the gap or to give life to a stale case. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. In my opinion, this unexplained delay makes a ground of detention not proximate, vitiating the order

of detention itself. In this behalf, I get supported by a decision of this Court rendered in the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City and ors., reported in 1997(1) G.L.H. 381.

In the result, the petition is allowed. The impugned order of detention dated 29.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.